

The issues raised before the ALJ included claimant's requests for medical treatment as recommended by the court appointed physician and temporary total disability compensation. This is an appeal from ALJ Brad Avery's decision authorizing specific doctors to provide claimant treatment as well as ordering respondent to pay claimant temporary total disability compensation.

The Board agrees with the claimant and concludes it does not have jurisdiction, at this juncture of the proceeding, to review this preliminary hearing order.

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.¹

The issue whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). Additionally, the issue whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.²

An ALJ has the jurisdiction and authority to grant temporary total disability benefits at a preliminary hearing. Accordingly, the Board does not have jurisdiction to review that decision on an appeal from a preliminary order.

¹ See K.S.A. 2005 Supp. 44-551.

² *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

The respondent also questions the ALJ's authority to appoint specific health care providers to treat claimant's injury. Claimant requested a preliminary hearing to obtain medical benefits as the requested treatment was not being provided. The Board has consistently found that the ALJ, pursuant to the preliminary hearing statute, K.S.A. 44-534a, has the authority to award medical compensation. Medical compensation includes the appointment of an authorized physician to treat an injured worker. Consequently, the ALJ had the jurisdiction and authority to authorize a treating physician. Accordingly, the issue of whether the ALJ erred by authorizing specific doctors to treat claimant is not subject to review under the preliminary hearing statute, K.S.A. 44-534a. In addition, the issue is not subject to review under K.S.A. 44-551(b)(2)(A), which permits review of preliminary orders that exceed an ALJ's authority.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.³

AWARD

WHEREFORE, it is the finding of the Board that the respondent's appeal is dismissed and Administrative Law Judge Brad E. Avery's Order for Compensation dated May 13, 2006, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of July 2006.

BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ K.S.A. 44-534a(a)(2).